

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/639, 530 05/01/96 ZHENG

Y PAT-1102

PM92/1011

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EXAMINER

CANFIELD, R

ART UNIT

PAPER NUMBER

3635

DATE MAILED:

10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/639,530	Applicant(s) Zheng
	Examiner Robert Canfield	Art Unit 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jul 16, 2001

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 16-28 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1 and 16-28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on May 1, 1996 is/are objected to by the Examiner.

11) The proposed drawing correction filed on Jul 16, 2001 is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

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1. This Office action is in response to applicant's response filed 07/16/01. Claims 1 and 16-28 are pending. Claims 2-15 have been canceled.

2. The examiner acknowledges receipt of the proposed formal drawings filed 07/16/01. These drawings are not approved. The submitted drawings fail to correspond with the drawings originally filed. The submitted drawings end with figure 13 whereas the originals end with figure 17. The submitted drawings include figures 6a-6f not referenced in the specification. The submitted drawings failed to address the drawing objection set forth in the rejection mailed 04/11/01. The submitted drawings fail to correspond to the specification since they include figures 6a-6f and fail to include figures 6 and 14-17.

3. The drawings are objected to because figures 14 and 15 cannot be connected. Correction is required.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, 16, 17, 20, 21, 23-26 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U. S. Patent No 5,467,794 and claims 1-15 of U.S. Patent No. 5,579,799. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is covered by the patent since the patent and the application are claiming common subject matter, as follows: foldable tents formed from three or more joined wall members each having a flexible frame and connected by foldable material/hinged sleeves.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

6. Claims 1, 16-18, 20, 21, and 23-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U. S. Patent No 5,816,279. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is covered by the patent since the patent and the application are claiming common subject matter, as follows: foldable tents

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formed from three or more joined wall members each having a flexible frame and connected by foldable material/hinged sleeves.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

7. Claims 19 and 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U. S. Patent No 5,467,794, claims 1-15 of U.S. Patent No. 5,579,799, and claims 1-8 of U.S. Patent No. 5,816,279. Although the conflicting claims are not identical, they are not patentably distinct from each other because ground ties and transparent/translucent material have been shown to be obvious choices of design as noted in the above rejections.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Canfield whose telephone number is (703) 308-2482. The examiner can normally be reached on M-Th.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Robert Canfield

April 5, 2001



Robert Canfield
Examiner